IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1208 of 1997

in

SPECIAL CIVIL APPLICATIONNo 1505 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SURESH KUMAR DUTT

Versus

UNION OF INDIA

Appearance:

1. LETTERS PATENT APPEAL No. 1208 of 1997
MR AS SUPEHIA for Appellant
MR YATIN SONI for Respondents.

CORAM : MR.JUSTICE J.N.BHATT
and

MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 14/03/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

1. The appellant has questioned the legality and validity of the judgment and order of the learned Single Judge recorded on 11/9/1997 in a writ petition whereby the petition came to be dismissed, by invoking the aids of the provisions of Clause 15 of the Letters Patent.

2. Appellant is the original petitioner, who was working as a Sepoy - Driver in the Army service since 19/10/1977. He joined Army Service Corps as a Driver (Mechanical Transport) which is a part of the armed forces of Union of India. The writ petition was directed against the order of the respondent authority dated 22/8/1984. Since original petitioner had not completed qualifying service, the respondent authority was moved by the petitioner for condonation of deficiency in qualifying service of 473 days. The petitioner's case has been that since his wife was seriously ill and on refusal of leave, he had remained absent for 473 days. He voluntarily resumed his service and for deserting service without leave, he came to be awarded rigorous imprisonment in military custody for 42 days. Thereafter, he was taken on duty. He was also given two promotions, first to the rank of Lance Naik and second to the rank of Naik.

3. Pursuant to Rule 132 of Pension Regulations for the Army (Part-I) the minimum qualifying service for earning service pension is 15 years. Petitioner had not completed qualifying service of 15 years as there was deficiency of 473 days. Petitioner had executed prescribed form on 20/5/1992 together with physical fitness certificate and served upto 31/1/1994.

4. The petitioner as such was due to retire on 31/10/1992, but since his service has been extended upto 31/1/1994 he continued to serve beyond 31/10/1992 as per the revised norms of the engagement of the services of the petitioner. He was discharged from service by order dated 28/2/1993. He was not given pension or any other retiral benefits as per the order of the respondent authority. He was discharged after the completion of the

terms of engagement of service under Army Rule 13 (3) Table III (i) in the normal course. The representation of the petitioner for condonation of deficiency in the qualifying service and for award of pension was not accepted by the respondent authority. The petitioner had filed Special Civil Application No. 9158 of 1993, which came to be rejected by the learned Single Judge on 28/10/1993, holding that the condonation of delay for deficiency in qualifying service beyond the period of 180 days as per the prevalent rules is not permissible and also being beyond the powers of the authority concerned.

5. It is necessary to mention that the petitioner's case had been recommended to the Government of India, Ministry of Defence for special sanction which was also rejected. Against the order of the rejection of the first petition by the learned Single Judge, Letters Patent Appeal No. 488 of 1993 for quashing and setting aside the order of the learned Single Judge came to be preferred. In the Letters Patent Appeal order was passed to permit the petitioner to retain married quarters upto 31/1/1994 and the respondent authority was directed to decide the case of the petitioner within four months from the date of the order. The Letters Patent Appeal came to be decided on 1/12/1993.

6. The original petitioner had not received the copy of the order of Division Bench in the Letters Patent Appeal and extension of time for the consideration of the case was extended. The case of the petitioner on consideration by the appropriate authority came to be rejected for condonation of deficiency in qualifying service being more than 180 days.

7. Petitioner again invoked the provisions of Article 226 of the Constitution of India and filed writ petition being Special Civil Application No. 1505 of 1995, which was also rejected by the learned Single Judge. However, in Letters Patent Appeal No. 360 of 1996 challenging the order of the learned Single Judge, the Division Bench of this Court directed learned Single Judge for afresh consideration and decision according to law on merits by order dated 4/9/1996 in Letters Patent Appeal No. 360/1996. The learned Single Judge again, on consideration of the facts and circumstances and the relevant proposition and rules and law, rejected the writ petition and hence this Letters Patent Appeal.

8. After having considered the long litigating journey, again we are called upon to consider the merits of the claim of the original petitioner, appellant before us and the validity of the judgment and order of the learned Single Judge dated 11/9/1997. We have given our anxious thoughts and considerations to the factual profile, relevant proposition of rules and the circumscribed zone of consideration and parameters of a writ Court under Article 226 when the challenge is against the order of the respondent authority on administrative side. Nothing has been successfully spelt out from the record of the present case, which would warrant the interference of this Court in exercise of appellate powers under Clause 15 of the Letters Patent. The learned Single Judge, upon appraisal and evaluation of the facts and the ambit of the powers of the respondent authority in condonation of delay in deficient service for the purpose of entitlement of retiral benefits of an Army Personnel, has correctly reached to the conclusion that the claim of the original petitioner for condonation of the deficiency or shortfall in the service span of 473 days is beyond the powers of the respondent authority in terms of the rules. The learned Single Judge has also given due consideration after elaborately considering the rules and regulations governing service of Army Personnel. It is held, upon such critical appraisal and evaluation of the factual profile and the rules that the period of colour service is prescribed but with an option of a further period of two years in the reserve service. This reserve service could be taken into consideration only under certain circumstances. The period of desertion of service or unauthorized absence cannot be reckoned as a part forming the spectrum of colour service in terminology of Army service. The authority to condone such deficiency or lapse has been on the part of the high ranking appropriate officials of the Army in terms of the rules and the representation for condonation of the excess days of desertion beyond 180 days came to be turned down by the appropriate authority working at the Ministry of Defence as the appropriate authority is not empowered to condone the delay beyond the period of 180 days in a fact situation like one in the present case. Therefore, it cannot be contended that the interpretation and the perception of appropriate authority in not condoning delay and rejecting the representation for condonation of delay or extension of time is in any way unjustified or colourable exercise of rules power. We also find from the facts and circumstances of the present case and the rule provision applicable to the factual situation, the

factual profile and the claim of the original petitioner that the rejection of the representation by the appropriate authority and denial of the claim advanced by the original petitioner and approved by the learned Single Judge is required to be confirmed and affirmed by us while dismissing the Letters Patent Appeal on merits, even if the analogous provisions of res-judicata are not taken into consideration for the dismissal of the appeal on technical ground and the same is, therefore, kept open. In the net result, the Letters Patent Appeal must fail being meritless and accordingly it is dismissed without any order as to costs.

[J.N. BHATT, J.]

[AKSHAY H. MEHTA, J.]

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